IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 271 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

REGIONAL DIRECTOR ESI CORPORATION

Versus

SURENDRABHAI RANCHHODBHAI PATEL

Appearance:

1. Appeal from Order No. 271 of 2003

MR HEMANT S SHAH for Petitioner No. 1

KEDAR B BINIWALE for Respondent No. 1,8-9

MR KIRAN P CHAVAN for Respondent No. 2-7

MR NILESH A PANDYA for Respondent No. 10

..... for Respondent No. 11

GOVERNMENT PLEADER for Respondent No. 12

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 22/03/2004

ORAL JUDGEMENT

1. This Appeal From Order is filed against the order passed by the learned 9th Joint Civil Judge (S.D.), Vadodara below Application Exh.5 in Regular Civil Suit no.909/2002 on 8-10-2002 whereby the injunction application was allowed by the learned trial Judge and the original defendants nos.1 and 2 were restrained from causing any interference in the Final Plot no.112 till the disposal of the suit.

2. This Court has issued notice to the respondents nos.9 and 12 on 19-8-2003. Thereafter, on 22-9-2003 an order was passed by this Court observing that considering the nature of dispute brought before the Court, respondents nos. 10 and 12 would be able to throw light on the subject property and its possession. The Court has, therefore, directed them to file affidavit-in-reply before the next date of hearing. Accordingly, affidavit-in-reply was filed on behalf of respondents nos.10 and 11 by Mr.R.P.Yagnik, Deputy Municipal Commissioner, Vadodara.

3. After having heard Mr.Hemant S.Shah, learned Advocate for the appellant, Mr.Kedar B. Biniwale, learned Advocate for respondents 1 to 8. Mr. Nilesh Pandya, learned Advocate for respondents 10 and 11 and Mr. Pujari, learned A.G.P.for respondent no.12, the Court is admitting this Appeal From Order and the same is taken up for final hearing at the joint request made by the learned Advocates for the parties.

4. The main grievance of the learned Advocate appearing for the appellant is that the appellant was not served at all when the summons of the suit was issued by the trial Court and Exh.5 application was decided without hearing the appellant. It is made clear from the plaint itself that respondents 1 to 8 have themselves stated in the plaint that the summons of the defendant no.2. i.e. the present appellant be served on the defendant no.1. However, both these defendants are different, and hence, the plea of the learned Advocate appearing for the present appellant deserves to be accepted, and since Exh.5 application is decided without hearing the appellant, the said order is hereby quashed and set aside, and the matter is remanded to the trial Court for deciding Exh.5 application afresh. Even otherwise, looking to the reply affidavit filed on behalf of respondants nos.10 and 11, it appears that the scheme itself has been finalised and the suit land was allotted to the plaintiffs. The trial Court will take into

consideration all these aspects while deciding Exh.5 application and an appropriate decision be taken within three months from today. With these directions, the present Appeal From Order is allowed to the aforesaid extent.

(K.A.Puj.J.)

Civil Application no.5806 of 2003

In view of the order passed in the Appeal From Order, no orders.

(K.A.Puj.J)

stanley-kap.